

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BRIAN EDWARD COLLIER, #1080476	§	
VS.	§	CIVIL ACTION NO. 6:06cv162
DIRECTOR, TDCJ-CID	§	

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration her Report, wherein she recommended that the request for habeas corpus relief be denied and the case be dismissed with prejudice.

The Petitioner filed objections. His main objection is related to his claim that the prosecutor in the case was disqualified to act as a prosecutor. Therefore, when he prosecuted the case against Petitioner, he acted without authority, and, according to Petitioner, violated state law (which state law is unclear) and violated his due process.

Petitioner's argument is without merit. His claim that the prosecutor was without authority to represent the state because he failed to file required oaths of office is based entirely on state law. That is, there is no federal constitutional claim. *Cantu v. Cockrell*, 2003 WL 21478790 (N.D. Tex. Jun. 23, 2003). Texas courts have routinely held that the absence of a record on file with the Secretary of State does not establish that the oaths were not taken. Further, "most importantly, simply failing to file an oath that has been taken does not deprive the official of his authority." *Thomas v. Burkhalter*, 90 S.W.3d 425, 427 (Tex. App.—Amarillo 2002, writ *ref'd*).

Petitioner's claim that he should receive habeas corpus relief from a murder conviction

because the prosecutor may not have timely filed his paper work upon assuming his office lacks any merit and is overruled, as are his other objections.

The Court finds that the Magistrate Judge's findings and conclusions are correct and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED WITH PREJUDICE**;

ORDERS that Petitioner is **DENIED** a certificate of appealability; and

ORDERS that all motions not previously ruled on are denied.

So ORDERED and SIGNED this 4th day of April, 2007.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE